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**IN THE  
COURT OF APPEALS OF INDIANA**

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JESSICA ROSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 85A02-0611-CR-997
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE WABASH CIRCUIT COURT  
The Honorable Robert McCallen III, Judge  
Cause No. 85C01-0504-FD-37

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**February 28, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Jessica Ross appeals her conviction of Maintaining a Common Nuisance,<sup>1</sup> a class D felony. Upon appeal, Ross presents a single issue, i.e., the sufficiency of the evidence supporting that conviction.

We affirm.

The facts favorable to the conviction are that on or about February 1, 2005, Michael Nethercutt, Ross's boyfriend, was driving his vehicle when Officer Hall of the North Manchester Police Department executed a traffic stop of Nethercutt's vehicle. The officer detected the odor of burnt marijuana emanating from the vehicle. Nethercutt consented to a search of his vehicle and Officer Hall subsequently discovered remnants of burnt marijuana cigarettes and rolling papers. When questioned, Nethercutt informed the officer that "he and his girlfriend had just before the traffic stop been smoking marijuana." *Transcript* at 31. That information was eventually passed on to Sergeant Matthew Rebholtz and Detective Nick Brubaker, both of the Wabash County Drug Task Force.

Sergeant Rebholtz and Detective Brubaker subsequently discovered the address of Ross and Nethercutt's shared residence and picked up their trash off of the curb on trash day. The officers took the trash to a police facility and searched it. They discovered a remnant of a burnt marijuana cigarette, plant material that field-tested positive for the presence of marijuana, and burnt pieces of foil that appeared to be consistent with

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<sup>1</sup> Ind. Code Ann. § 35-48-4-13(b) (West, PREMISE through 2006 Second Regular Session).

methamphetamine use. Those items were discovered among several items of mail addressed to both Nethercutt and Ross at that address.

Following the discovery of the aforementioned items, Sergeant Rebholtz obtained a search warrant for Nethercutt and Ross's residence. The warrant was served on February 3, 2005, by Sergeant Rebholtz, Detective Brubaker, and Officers Enyeart and Olson of the North Manchester Police Department. When they served the warrant, Ross was present. Upon entering the residence, the officers detected the odor of burnt marijuana. The search uncovered the following items: (1) A marijuana "blunt;" (2) a marijuana cigarette; (3) a bong; and (4) a soda can modified for use as a smoking device. Ross evinced knowledge of the presence of the "blunts" in the ashtray, stating, "It's just marijuana. We smoke marijuana." *Transcript* at 54. Later, while testifying at trial, Ross claimed she knew Nethercutt kept marijuana at their residence and that the bong and the modified soda bottle belonged to Nethercutt. Ross was charged with maintaining a common nuisance and possession of marijuana. She was convicted of both counts following a bench trial.

Ross challenges only her conviction of maintaining a common nuisance, contending that the evidence was insufficient to support that conviction. Specifically, Ross contends the evidence was insufficient to prove that she or any other person used marijuana in her residence. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness

credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

In order to obtain a conviction for maintaining a common nuisance under I.C. § 35-48-4-13(b), the State was required to prove Ross (1) knowingly or intentionally maintained a building (2) that was used one or more times (3) by persons to (a) unlawfully use controlled substances or (b) keep controlled substances or items of drug paraphernalia.

There was evidence presented at trial establishing that Ross and Nethercutt shared the residence in question. During the search of the residence, officers found traces of marijuana in burnt blunts and marijuana cigarettes in ashtrays. Moreover, Sergeant Rebholtz testified, “when we were explaining [to Ross] that it’s unlawful to possess she she [sic] at some point and [sic] time said it’s just marijuana, we smoke marijuana. She’d uh she repeated that more than one occasion while we (inaudible).” *Transcript* at 64. Detective Brubaker testified upon cross-examination that he smelled the distinctive odor of burnt marijuana present in Ross’s residence during the search. Taken together, the foregoing permits a reasonable inference that Ross and Nethercutt smoked marijuana in their residence. This is sufficient to support a conviction for maintaining a common nuisance under I.C. § 35-48-4-13(b)(1). We note also that officers discovered a bong and

a soda bottle modified for use as a device for smoking marijuana. This is sufficient to support a conviction for maintaining a common nuisance under I.C. § 34-48-4-13(b)(2). The evidence was sufficient to support this conviction under either subsection of I.C. § 35-48-4-13(b).

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.